

1 UNITED STATES DISTRICT COURT
 2 EASTERN DISTRICT OF NORTH CAROLINA
 3 WESTERN DIVISION

4 UNITED STATES OF AMERICA,)
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PLAINTIFF,

VS CASE NO. 5:10-HC-2124-BO

PETER M. EBEL,

DEFENDANT.

STATUS CONFERENCE

MAY 6, 2011

HONORABLE TERRENCE W. BOYLE, PRESIDING

APPEARANCES:

MR. G. NORMAN ACKER, III
 ASSISTANT UNITED STATES ATTORNEY
 310 NEW BERN AVENUE
 RALEIGH, NC 27601
 (FOR THE GOVERNMENT)

MR. EDWARD D. GRAY
 ASSISTANT UNITED STATES ATTORNEY
 310 NEW BERN AVENUE
 RALEIGH, NC 27601
 (FOR THE GOVERNMENT)

1 APPEARANCES: (CONT.)

2 MR. ROBERT LONNIE COOPER
3 ATTORNEY AT LAW
4 1719 RAMSEY STREET
5 P.O. BOX 1598
6 FAYETTEVILLE, NC 28302-1598
7 (FOR THE RESPONDENT; MORNING SESSION ONLY)

8 MR. JAMES RYAN HAWES
9 ATTORNEY AT LAW
10 127 W. HARGETT STREET
11 RALEIGH, NC 27601
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25 SHARON K. KROEGER, COURT REPORTER
MACHINE SHORTHAND REPORTER, COMPUTER AIDED TRANSCRIPTION

1 THE COURT: ALL RIGHT. I GUESS YOU CAN BRING
2 MR. EBEL OUT. LET'S SEE. GOOD MORNING, MR. GRAY, MR.
3 ACKER, MR. COOPER.

4 MR. ACKER: GOOD MORNING.

5 MR. COOPER: GOOD MORNING.

6 THE COURT: YOU CAN HAVE A SEAT. MR. COOPER,
7 ARE YOU THE FIRST LAWYER TO BE APPOINTED TO REPRESENT THE
8 DEFENDANT?

9 MR. COOPER: NO, YOUR HONOR.

10 THE COURT: WHO WAS THE FIRST ONE?

11 MR. COOPER: YOUR HONOR, YOU HAVE TO GO BACK
12 TO THE BEGINNING OF THE CASE, BUT I THINK I AM --

13 THE COURT: NO, I MEAN IN THE CIVIL CASE.

14 MR. COOPER: IN THE CIVIL CASE? YES.

15 THE COURT: OKAY.

16 MR. COOPER: I THINK CERTAINLY THE PUBLIC
17 DEFENDER'S OFFICE WAS REPRESENTING HIM PRIOR TO MY
18 SERVICES. I DO BELIEVE I AM THE FIRST ONE OUTSIDE OF THE
19 PUBLIC DEFENDER'S OFFICE.

20 THE COURT: OKAY. MR. EBEL, DO YOU PRONOUNCE
21 IT EBEL?

22 THE RESPONDENT: YES, SIR.

23 THE COURT: WAS THE FEDERAL PUBLIC DEFENDER
24 YOUR FIRST LAWYER?

25 THE RESPONDENT: YES, SIR.

1 THE COURT: AND THEN WE HAD A HEARING. WERE
2 THEY YOUR LAWYER WHEN YOU HAD THE HEARING?

3 THE RESPONDENT: I AM SORRY, SIR.

4 THE COURT: WERE THEY YOUR LAWYER WHEN WE HAD
5 THE HEARING?

6 THE DEFENDANT: YES, SIR. IN JANUARY, I
7 BELIEVE, SIR, IT WAS MR. MC NAMARA.

8 THE COURT: THAT WAS THE ONLY OTHER HEARING
9 YOU HAVE HAD IN THIS CASE?

10 THE RESPONDENT: THAT'S CORRECT, SIR.

11 THE COURT: THEN YOU WERE CERTIFIED IN JUNE OR
12 JULY OF LAST YEAR?

13 THE RESPONDENT: YES, SIR. JUNE, SIR.

14 THE COURT: OKAY. AND AFTER THAT HEARING, YOU
15 DISMISSED THEM AND I APPOINTED THE PANEL ATTORNEY?

16 THE RESPONDENT: MR. COOPER, YES, SIR.

17 THE COURT: AND DO YOU WANT HIM TO BE
18 DISMISSED?

19 THE RESPONDENT: I AM AFRAID, SIR, I HAVE SOME
20 PAPERWORK HERE, IF YOU WOULD CARE TO LOOK AT IT. THERE
21 IS A PERSONALITY CONFLICT BETWEEN MR. COOPER AND MR.
22 COOPER'S OFFICE, AND MYSELF AND MY WIFE.

23 THE COURT: I HAVE READ YOUR LETTER OR THE
24 LETTER OF APRIL 28.

25 THE RESPONDENT: YES, SIR.

1 THE COURT: DID YOU GET A COPY OF THAT?

2 MR. GRAY: NO, YOUR HONOR. THAT WAS FILED
3 UNDER SEAL. WE WERE NOT ABLE TO RETRIEVE THAT.

4 THE COURT: DO YOU HAVE ANY OBJECTION TO THEM
5 SEEING IT?

6 THE RESPONDENT: NO, SIR.

7 THE COURT: NO. DON'T YOU THINK THEY SHOULD
8 SEE IT?

9 THE RESPONDENT: IF THEY WISH, I HAVE NO
10 OBJECTION.

11 THE COURT: WELL, IT'S GOING TO BE HARD FOR
12 THEM TO RESPOND IF THEY NEVER SEE IT.

13 THE RESPONDENT: YES. BY ALL MEANS.

14 THE COURT: YOU PUT THIS TOGETHER AND FILED IT
15 YOURSELF?

16 THE RESPONDENT: YES, SIR.

17 THE COURT: I AM GOING TO HAVE A COPY GIVEN TO
18 YOU. I AM JUST TRYING TO KEEP THE FLOW OF BUSINESS GOING
19 HERE, BUT I AM GOING TO HAVE A COPY GIVEN TO YOU, AND WHO
20 IS THE OTHER LAWYER THAT YOU ARE INTERESTED IN?

21 THE RESPONDENT: MR. HAWES, SIR.

22 THE COURT: MR. HAWES. HE IS IN SOME OTHER
23 CASES?

24 THE RESPONDENT: CORRECT, SIR.

25 THE COURT: HE IS GOING TO BE HERE THIS

1 AFTERNOON?

2 THE RESPONDENT: CORRECT.

3 THE COURT: SO IF I LET MR. COOPER OUT AND IF
4 MR. HAWES IS INTERESTED, HAVE YOU TALKED TO HAWES?

5 THE RESPONDENT: MY WIFE TALKED TO HIM, SIR.

6 THE COURT: AND HAWES INDICATED HE WOULD NOT
7 BE OPPOSED TO BEING INVOLVED IN THE CASE?

8 THE RESPONDENT: THAT IS MY UNDERSTANDING,
9 YES, SIR.

10 THE COURT: SO IF I AM POSSIBLY GOING TO DO
11 THAT, I WILL BRING YOU BACK THIS AFTERNOON WHEN HAWES IS
12 HERE, BUT THE -- WHERE DID YOU GET THE STUFF FROM THE
13 B.O.P.?

14 THE RESPONDENT: THAT IS DISCOVERY, SIR, THAT
15 MR. COOPER SENT.

16 THE COURT: SO THE GOVERNMENT HAS THIS? IT
17 CAME FROM THE GOVERNMENT; DIDN'T IT?

18 THE RESPONDENT: YES, SIR.

19 THE COURT: MR. COOPER?

20 MR. COOPER: YES, YOUR HONOR.

21 THE COURT: SO THE ONLY THING THEY DON'T HAVE
22 IS YOUR LETTER; IS THAT IT?

23 THE RESPONDENT: THAT'S CORRECT, SIR.

24 THE COURT: BUT THEY HAVE ALL THE OTHER
25 UNDERLYING DOCUMENTS?

1 THE RESPONDENT: THEY DO, SIR.

2 THE COURT: THEY CREATED THEM AND SENT THEM TO
3 YOU?

4 THE RESPONDENT: YES. THERE IS THE ORIGINAL
5 HERE THAT THEY ARE WELCOME TO SEE. I CAN PASS THIS
6 ACROSS, IF THAT WILL SHORT CIRCUIT THINGS.

7 THE COURT: ALL RIGHT. JUST GIVE IT TO THEM
8 AND WE'LL GET YOU A COPY. THERE IS NOTHING SECRET IN
9 THAT.

10 (WHEREUPON, THERE WAS A PAUSE.)

11 THE COURT: SO THIS MATERIAL THAT YOU ATTACHED
12 HAVING TO DO WITH RECOMMENDATIONS FOR COMMUNITY
13 SUPERVISION, YOU ARE SAYING THAT THE GOVERNMENT HAD A
14 PROTOCOL THAT THEY WERE GOING TO APPLY TO YOU IN YOUR
15 SUPERVISED RELEASE. IS THAT WHAT YOU ARE SAYING?

16 THE RESPONDENT: PRINCIPALLY WHAT I WAS SAYING
17 IS THAT IN THE PROCESS, MY WIFE LIVES IN VIRGINIA. MY
18 CASE IS OUT OF CALIFORNIA BECAUSE I WAS HELD AT LOS
19 ANGELES, LAX, ON ENTRY TO THE UNITED STATES. THAT IS THE
20 ONLY CONNECTION I HAVE WITH CALIFORNIA IS ACTUALLY BEING
21 ARRESTED THERE, AND THAT IS WHERE THE CASE COMES OUT OF.

22 MY WIFE CURRENTLY LIVES IN VIRGINIA, BUT SHE
23 HAS ACQUIRED A HOME IN NORTH CAROLINA. AND MY -- BUT
24 LAST SUMMER, AS THAT DOCUMENTATION SHOWS, THERE WERE
25 PEOPLE INVOLVED IN GETTING THE CASE RELOCATED FROM LOS

1 ANGELES TO VIRGINIA WHERE MY WIFE LIVED AT THE TIME, BUT
2 THAT GOT INTERCEPTED BY THIS CERTIFICATION.

3 SO IN THE PROCESS OF THAT RELOCATION GOING
4 FORWARD, IT WAS INTERRUPTED AND STOPPED BECAUSE I WAS
5 BROUGHT DOWN TO BUTNER, NORTH CAROLINA.

6 NOW, WHAT I WISH TO DO, OF COURSE, IS CONTINUE
7 THE RELOCATION TO NORTH CAROLINA SO THAT IF I AM AND WHEN
8 I AM RELEASED, I WOULD COME UNDER THE JURISDICTION, OR
9 WHATEVER THE WORDING IS, FOR THE PROBATION SERVICE IN
10 NORTH CAROLINA SO THAT I WOULD BE ABLE TO LIVE WITH MY
11 WIFE.

12 MY CONCERN IS THAT IN THE SOMP REPORT, WHICH
13 WE CONTEST RIGOROUSLY --

14 THE COURT: THE WHAT?

15 THE RESPONDENT: THE SOMP REPORT. THAT IS THE
16 REPORT FROM DEVENS, AT THE VERY END, BY THIS GENTLEMAN
17 NAMED THIBAUT. THAT IS THE SEXUAL OFFENDERS MANAGEMENT
18 PROGRAM. IT'S A HIGHLY PREJUDICIAL REPORT THAT WE WISH
19 TO CONTEST AT A TRIAL, AND MANY OF THE STATEMENTS,
20 RECOMMENDATIONS, AND THINGS SAID THROUGHOUT THIS
21 DOCUMENTATION ARE SPURIOUS, AT BEST, AND OUTRIGHT FALSE,
22 AT WORSE, WHICH WE CAN PROVE, BUT THAT CAN ONLY COME
23 ABOUT AT THE HEARING OR AT A TRIAL, I SHOULD SAY.

24 THE COURT: WELL, THIBAUT WRITES THIS
25 DOCUMENT THAT ON PAGE 16 HE SIGNS.

1 THE RESPONDENT: THAT HE SIGNED; RIGHT.

2 THE COURT: IS THAT WHAT YOU ARE TALKING
3 ABOUT?

4 THE RESPONDENT: THAT IS THE STIPULATION.

5 THE COURT: IT DOESN'T HAVE A DATE.

6 THE RESPONDENT: NO, SIR. I BELIEVE IT BEGINS
7 ON 1282 -- I AM SORRY. NO. IT'S BEFORE THAT. IT BEGINS
8 ON PAGE 12 OF HIS NOTATION, AND AT THE BOTTOM, 1280 OF
9 THE B.O.P. NOTATION, AND THIS IS AT THE END OF HIS
10 ASSESSMENT THAT HE MADE.

11 THE COURT: WELL, IS THIS ASSESSMENT SAYING
12 YOU SHOULD BE DETAINED OR YOU SHOULD BE RELEASED?

13 THE RESPONDENT: SHOULD BE RELEASED. HE HAD
14 NO OBJECTION TO MY RELEASE. HE JUST HAD ON TOP OF THAT A
15 WHOLE BUNCH OF STIPULATIONS, INCLUDING WHICH IS TOTALLY
16 UNJUST, IS WHERE HE RECOMMENDS THAT I NOT BE PERMITTED TO
17 RESIDE WITH MY WIFE, WHICH IS RECOMMENDATION NUMBER 4,
18 "MR. EBEL SHOULD NOT RESIDE" -- NO, I AM SORRY. IT'S NOT
19 NUMBER 4. I AM TRYING TO FIND IT.

20 THE COURT: ALL RIGHT. AND THIS
21 APPARENTLY --

22 THE RESPONDENT: YES, IT IS NUMBER 4. I AM
23 SORRY.

24 THE COURT: THIS COMES UNDER THE DATE OF JUNE
25 8, 2010?

1 THE RESPONDENT: YES, THAT WAS AT THE TIME OF
2 THE CERTIFICATION.

3 THE COURT: WELL, ARE YOU SAYING AGAIN THAT HE
4 SAYS YOU SHOULD BE RELEASED OR THAT YOU SHOULD BE
5 DETAINED?

6 THE RESPONDENT: HIS STATEMENT, HIS WHOLE
7 THING IS THAT I SHOULD BE RELEASED, YES, SIR. YES.

8 THE COURT: AND THEN --

9 THE RESPONDENT: THIS DOCUMENT -- I AM SORRY
10 FOR INTERRUPTING, SIR -- THE DOCUMENT THAT YOU ARE
11 LOOKING AT IS THE REPORT, I BELIEVE, THAT WAS TO BE SENT
12 TO LOS ANGELES PROBATION BECAUSE I WAS TO BE SENT OUT
13 THERE, RELEASED ON THE 22ND, AND THIS IS EXTRACTED FROM
14 HIS ACTUAL PROBATION REPORT.

15 THE COURT: OKAY. ALL RIGHT.

16 THE RESPONDENT: OR RECOMMENDATIONS TO
17 PROBATION.

18 THE COURT: ALL RIGHT. AND THIS SHEET WHICH
19 HAS A LOT OF ABBREVIATIONS IN IT -- I DON'T KNOW WHAT
20 THEY MEAN -- BUT DATED JANUARY 13, 2009, SUBJECT, WALSH
21 NOTIFICATION PANEL, EBEL --

22 THE RESPONDENT: THAT'S CORRECT, SIR.

23 THE COURT: THAT IS THE ONE THAT IS A YEAR AND
24 A HALF AHEAD OF THE DATE THAT YOU ARE GOING TO BE
25 RELEASED?

1 THE RESPONDENT: YES, SIR.

2 THE COURT: AND IT SAYS BASED ON THE REVIEW OF
3 ALL AVAILABLE INFORMATION CONCERNING THIS INMATE, THE
4 PANEL DETERMINED THAT THE INMATE DOES NOT MEET
5 DEFINITIONAL CRITERIA OF SEXUALLY DANGEROUS PERSON, AND
6 YOU ARE RELYING ON THAT, TOO; IS THAT RIGHT?

7 THE RESPONDENT: YES, SIR.

8 THE COURT: ALL RIGHT. YOU CAN HAVE A SEAT.
9 HOW DOES HE GET CERTIFIED IF THE B.O.P. HAS DETERMINED
10 THAT HE DOESN'T MEET THE CRITERIA?

11 MR. GRAY: YOUR HONOR, WE ARE AT A
12 DISADVANTAGE BECAUSE WE DON'T HAVE THE DOCUMENTS THAT
13 YOU ARE SPEAKING OF IN FRONT OF US RIGHT NOW.

14 THE COURT: OKAY.

15 MR. GRAY: WE DON'T KNOW WHICH DOCUMENTS HE
16 HAS ATTACHED TO HIS LETTER. IF WE CAN HAVE AN
17 OPPORTUNITY TO TAKE A LOOK AT THOSE -- HOWEVER, THE BASIS
18 FOR CERTIFICATION --

19 THE COURT: SO YOU HAVEN'T SEEN WHAT I AM
20 READING FROM?

21 MR. GRAY: NO, YOUR HONOR.

22 THE COURT: OKAY. WELL, IT WOULD BE UNFAIR TO
23 ASK YOU TO RESPOND. MAYBE WE WILL DO THAT THIS AFTERNOON
24 WITH RESPECT TO HIM.

25 YOU WANT TO GET OUT, TOO; IS THAT RIGHT, MR.

1 COOPER?

2 MR. COOPER: WELL, YOUR HONOR, IT IS PATENTLY
3 CLEAR TO ME THAT MR. EBEL IS UNHAPPY AND DISSATISFIED FOR
4 WHATEVER THE REASON IS. AND IF IT'S THE COURT'S
5 PLEASURE, THEN YES, YOUR HONOR, I WILL MOVE TO WITHDRAW.
6 THE RELATIONSHIP HAS DETERIORATED TO THE POINT WE ARE NOT
7 GOING TO BE ABLE TO GET ANYTHING DONE. I DON'T THINK WE
8 HAVE ANY OTHER CHOICE BUT TO DO THAT.

9 THE COURT: WHERE IS HIS CASE RIGHT NOW IN
10 TERMS OF THE PROCESS?

11 MR. COOPER: WE RECEIVED DISCOVERY ON THE CASE
12 ON APRIL 1, AND IT'S SOME -- I HAVE THE DISK HERE -- 1700
13 PAGES. I REVIEWED THE DISCOVERY. I MAILED SUCH PORTIONS
14 OF THE DISCOVERY TO MR. EBEL THAT WOULD BE ALLOWED IN THE
15 B.O.P.

16 AND PRIOR TO RECEIVING -- PRIOR TO ME MAILING
17 THE DISCOVERY IS WHEN I GOT THE LETTER FROM MR. EBEL
18 ASKING THAT I WITHDRAW.

19 THE COURT: YES.

20 MR. COOPER: THAT IS NOT THE FIRST TIME HE AND
21 I HAVE HAD A DISCUSSION ABOUT WHETHER OR NOT HE DESIRED
22 MY REPRESENTATION, SO AT THAT POINT I FIGURED THE BEST
23 THING TO DO WOULD BE TO MOVE TO WITHDRAW.

24 EVEN SO, ONCE I HAD THE DISCOVERY, HE IS
25 ENTITLED TO REVIEW IT. AS I SAID, I MAILED SUCH PORTIONS

1 TO HIM AS I COULD, AND I SPOKE TO HIM AGAIN THIS MORNING
2 AND HE HAS STATED THAT HE IS AWARE OF WHAT THE STATUS IS.

3 WE AREN'T AGREEABLE ON WHAT THE NEXT STEP
4 WOULD BE. BUT HE SAYS IT IS JUST NOT GOING TO WORK AND
5 IF IT'S NOT GOING TO WORK, IT'S NOT GOING TO WORK. THAT
6 IS WHERE WE ARE. I HAVE THE DISCOVERY DISK. I AM MORE
7 THAN HAPPY TO TURN IT BACK OVER TO THE GOVERNMENT.

8 THE COURT: YOU WHAT?

9 MR. COOPER: I HAVE THE DISCOVERY DISK. I AM
10 MORE THAN HAPPY TO TURN IT BACK OVER.

11 THE COURT: WELL, DON'T TURN IT OVER TO THEM
12 IF IT'S THE DISCOVERY. TURN IT OVER TO HIS NEXT LAWYER.

13 MR. COOPER: I WILL DO THAT.

14 THE COURT: OKAY.

15 AND AGAIN, I AM TRYING TO JUST BE IN A WORKMAN
16 LIKE WAY, GET INTO THESE CASES. DO YOU KNOW WHAT IS IN
17 THE DISCOVERY OR IS IT JUST SORT OF A PACKAGE DISCOVERY
18 OF EVERYTHING THAT MIGHT BE RELEVANT WITHOUT BEING
19 SCANNED TO TELL.

20 WHAT -- HERE IS WHAT I AM TRYING TO GET AT.
21 IT'S NOT A TRICK QUESTION. I AM OPERATING UNDER THE
22 PRINCIPLE THAT THE BRADY TYPE ORDER THAT I ENTERED IN
23 EDWARDS IS GOING TO BE EFFECTIVE IN MY CASES, AND SO I AM
24 INTERESTED IN KNOWING IF YOU HAVE A VOLUME OF INFORMATION
25 FOR THIS PERSON AND YOU HAVE CATALOGED IT OR COLLECTED IT

1 RATHER AND PUT IT ON A DISK. HAVE YOU DISCRIMINATED
2 THROUGHOUT IT AND SAID, WELL, THIS IS BRADY, THIS IS
3 COMPLIANCE WITH BRADY, THIS IS FAVORABLE, THIS IS
4 UNFAVORABLE, OR IS IT JUST THE GROSS INFORMATION?

5 MR. ACKER: YOUR HONOR, LET ME SPEAK TO THE
6 BRADY ISSUE AS IT RELATES TO THIS PARTICULAR CASE AND
7 THEN ALSO A LITTLE BIT MORE GENERALLY. IN THIS
8 PARTICULAR CASE, AS IN ALL THE CASES, WE TURNED OVER
9 EVERYTHING THAT THE STANDING ORDER INSTRUCTS US TO DO
10 WHICH IS ALL THE UNDERLYING MEDICAL RECORDS, ALL THE
11 PSYCHOLOGICAL RECORDS, ANY TESTING, ANY PRIOR
12 PSYCHOLOGICAL EVALUATIONS THAT ARE ALREADY IN THE B.O.P.
13 FILES.

14 WE HAVE ALSO, I BELIEVE, TURNED OVER TWO --
15 ONE EXPERT REPORT AND A SECOND EXPERT REPORT WILL BE
16 TURNED OVER WITHIN THE NEXT TWO WEEKS.

17 THE COURT: IN THIS CASE?

18 MR. ACKER: YES. WHEN WE SPOKE PREVIOUSLY
19 ABOUT THE EDWARDS CASE, THE QUESTION WAS WHETHER OR NOT
20 WE COULD WITHHOLD EXPERT REPORTS UNDER RULE 26 OF THE
21 CIVIL RULES THAT WERE NOT FAVORABLE, WHETHER THEY WERE
22 WRITTEN OR ORAL.

23 AND SINCE THE TIME OF THE ORDER THAT YOU
24 ENTERED IN EDWARDS, WE HAVE ENTERED INTO A STIPULATION
25 WITH THE FEDERAL PUBLIC DEFENDER AND HAVE AGREED THAT

1 THAT WOULD APPLY TO ALL CASES, INCLUDING PANEL ATTORNEYS,
2 IN WHICH ANY REPORT, FAVORABLE OR UNFAVORABLE, ORAL OR
3 WRITTEN, BY THE PSYCHOLOGISTS AT BUTNER WILL BE TURNED
4 OVER, REGARDLESS. WE WOULD NOT RELY ON RULE 26 OF THE
5 RULES OF CIVIL PROCEDURE IN THAT.

6 WHAT WE HAVE NOT AGREED TO DO ACROSS THE BOARD
7 IS TO TURN OVER ANY UNFAVORABLE OPINIONS FROM OUTSIDE
8 EXPERTS. THAT IS, EXPERTS OTHER THAN --

9 THE COURT: FAVORABLE TO THE DEFENDANT?

10 MR. ACKER: FAVORABLE TO THE DEFENDANT. WE
11 STILL CONTEND THAT WE HAVE THE RIGHT UNDER RULE 26 OF THE
12 RULES OF FEDERAL PROCEDURES TO USE AN EXPERT TO CONSULT
13 WITH THAT WE DO NOT PLAN TO CALL AT TRIAL AND WE ARE NOT
14 REQUIRED TO TURN THAT OVER.

15 WE UNDERSTAND, HOWEVER --

16 THE COURT: SO IN THEORY, YOU CAN HAVE A THIRD
17 PARTY EXPERT OR WITNESS, A THIRD PARTY WITNESS, WHOSE
18 INFORMATION COULD BE CREATED AND ALSO KNOWN TO YOU AND IT
19 COULD BE FAVORABLE TO THE DETAINEE OR IN SOME WAY LEAD TO
20 FAVORABLE INFORMATION FOR THE DETAINEE AND BECAUSE YOU
21 WERE NOT GOING TO MAKE THAT A PART OF YOUR CASE, YOU
22 DON'T HAVE TO DISCLOSE IT. THAT IS YOUR POSITION?

23 MR. ACKER: THAT IS OUR POSITION, YOUR HONOR.

24 THE COURT: BUT THE BRADY ORDER IN EDWARDS
25 WOULD ADDRESS THAT.

1 MR. ACKER: YES, IT WOULD, YOUR HONOR. AND
2 THE WAY WE WOULD ASK YOUR HONOR TO DEAL WITH THAT IS IF
3 YOUR HONOR IN EACH CASE THAT IS BEFORE YOUR HONOR,
4 ENTERED AN ORDER NOTING THAT THE GOVERNMENT HAS TAKEN
5 THIS POSITION AND OBJECTS TO THE APPLICATION OF BRADY TO
6 A CIVIL CASE, BUT NEVERTHELESS, YOU RULE THAT WE DO HAVE
7 TO, FOR THE REASONS SET FORTH IN EDWARDS, WE WILL COMPLY
8 WITH YOUR ORDER.

9 BUT WE DO FOR THE RECORD, WOULD LIKE FOR EACH
10 CASE IN WHICH THAT -- WE HAVE THAT OBLIGATION, THERE TO
11 BE AN ORDER IN THAT CASE NOTING THAT WE HAVE OBJECTED.

12 THE COURT: HERE IS THE DILEMMA. AND YOU ALL
13 ARE DOING AN EXCELLENT JOB. HERE IS THE DILEMMA. IF THE
14 RULING IS, IN FACT, GROUNDED IN THE CONSTITUTION AND A
15 CONSTITUTIONAL RIGHT, THEN I DON'T HAVE THE DISCRETION TO
16 APPLY IT OR NOT APPLY IT. I MEAN, I THINK THAT IS TRUE.

17 IF IT'S A FUNDAMENTAL CONSTITUTIONAL RIGHT
18 THAT IS THE SUPREME LAW OF THE LAND, THEN MY INVOLVEMENT
19 IS RELEVANT IN IT. AND ALSO NO OTHER JUDGE, IF IT WAS
20 FOUND TO BE VALID, --

21 MR. ACKER: THAT'S CORRECT, YOUR HONOR.

22 THE COURT: -- NO OTHER JUDGE WOULD BE ABLE TO
23 ELECT TO HAVE A RULE OR HAVE SOME OTHER DISPOSITION THAT
24 WAS CONTRARY TO THAT.

25 MR. ACKER: THAT'S CORRECT, YOUR HONOR. BUT

1 BECAUSE NO APPELLATE COURT HAS RULED ON THAT YET, WE JUST
2 WANT TO PRESERVE FOR THE RECORD THAT WE HAVE OBJECTED.
3 WE DO NOT AGREE WITH THAT.

4 THE COURT: RIGHT. BUT I THINK MY POSITION
5 WOULD BE THAT YOU HAVE GOT TO START SOMEWHERE AND MOST
6 CONSTITUTIONAL RIGHTS GET STARTED IN DISTRICT COURT,
7 EITHER BY DENYING THEM OR AFFIRMING THEM. I MEAN, I AM
8 HOPEFUL THAT -- WELL, GIDEON (PHONETIC) WAS A STATE CASE,
9 BUT, ANYWAY.

10 MR. ACKER: WELL, YOUR HONOR, THE ORDER THAT
11 YOU ENTERED IN EDWARDS, WE DON'T REALLY BELIEVE IS
12 APPEALABLE BECAUSE HE HAS BEEN RELEASED.

13 THE COURT: I SEE. SO IT MIGHT BE THE NEXT
14 TIME I RULE ON IT.

15 MR. ACKER: IT MAY BE, YOUR HONOR.

16 THE COURT: AND -- NOT TRIPP. WHAT IS HIS
17 NAME? TIMMS. HE FILLED ONE TODAY.

18 MR. ACKER: HE DID, YOUR HONOR. SO IT MAY BE
19 THAT THAT IS THE CASE IN WHICH YOU DEAL WITH THAT.

20 THE COURT: AND HE IS WELL KNOWN TO THE
21 APPELLATE COURT.

22 MR. ACKER: THAT'S CORRECT, YOUR HONOR.

23 THE COURT: SO THAT MIGHT BE A GOOD VEHICLE TO
24 TAKE UP.

25 MR. ACKER: BUT EVEN ABSENT THAT, IF YOU ENTER

1 AN ORDER IN ANY OF THESE CASES AND IT DOESN'T NEED TO BE
2 A LONG ORDER, YOU CAN REFER TO EDWARDS, BUT IF YOU
3 ENTERED SUCH AN ORDER NOTING OUR OBJECTION, WE WILL
4 COMPLY.

5 THE COURT: AND ONE OF YOUR -- I AM NOT
6 SPEAKING FOR YOU, BUT JUST THINKING OUTLOUD -- ONE OF
7 YOUR CONCERNS PROBABLY IS THAT THE EDWARDS' BRADY ORDER
8 INHIBITS THE FULL DEVELOPMENT OF INFORMATION BECAUSE IT
9 ACTS AS A BARRIER OR DANGER ZONE FOR YOU TO AGGRESSIVELY
10 PURSUE EVIDENCE IN THE CASE AND BUILD SUBSTANTIVE CASE
11 WHEN IT MIGHT END UP UNDOING YOUR CASE.

12 MR. ACKER: THAT'S CORRECT, YOUR HONOR.

13 THE COURT: BUT THE COUNTERWEIGHT TO THAT IS
14 THAT WE ARE ALL IN THE BUSINESS OF TRUTH AND JUSTICE, AND
15 SO IF YOUR RESOURCES END UP PRODUCING SOMETHING THAT IS
16 CONTRARY TO THE POSITION YOU NOW TAKE, THAT IS WHERE THE
17 CASE WENT.

18 MR. ACKER: WE UNDERSTAND. AND YOUR HONOR, AS
19 YOUR HONOR POINTED OUT IN THE EDWARDS CASE, THIS IS A
20 MATTER OF FIRST IMPRESSION. IT'S CERTAINLY AN IMPORTANT
21 ISSUE. AND AS WE SAID, AS LONG AS THERE IS AN ORDER IN A
22 PARTICULAR CASE NOTING THAT WE HAVE OBJECTED, BUT
23 ORDERING US TO COMPLY WITH YOUR ORDER IN EDWARDS, WE WILL
24 DO SO.

25 THE COURT: AND YOU KNOW, I MAY BE TOO

1 NEARSIGHTED ABOUT IT BECAUSE I HAVE BEEN INVOLVED WITH
2 IT, BUT IF IT'S GOT ANY MEANING TO IT, IT WOULD BE
3 SOMETHING THAT WE ALL NEED TO KNOW. I DON'T KNOW HOW
4 EAGER THE APPELLATE COURTS ARE GOING TO BE TO CONTINUE TO
5 REVISIT THIS WHOLE 4248 SITUATION.

6 BUT SO THE ANSWER TO MY QUESTION FROM A FEW
7 MINUTES AGO THAT I WANDERED AWAY FROM IS THAT THE
8 INFORMATION IS PROVIDED COMPREHENSIVELY IN GROSS BUT NOT
9 IDENTIFIED AS BEING FAVORABLE OR UNFAVORABLE?

10 MR. ACKER: THAT'S CORRECT, YOUR HONOR.

11 THE COURT: OKAY.

12 MR. ACKER: AND I DON'T BELIEVE -- I DON'T
13 HAVE THE CITE, BUT I BELIEVE THERE IS A FOURTH CIRCUIT
14 CASE DEALING WITH THAT ISSUE THAT SAYS, FOR EXAMPLE, IF
15 YOU JUST PROVIDE AN OPEN FILE DISCOVERY, THAT YOU HAVE
16 COMPLIED WITH BRADY AS LONG AS THE MATERIAL IS WITHIN
17 THAT MASS OF INFORMATION.

18 THE COURT: SO IN MR. EBEL'S CASE, HE HAS HAD
19 YOUR DISCOVERY AND THEN WHAT HAPPENS? THERE IS A 60-DAY
20 PERIOD UNDER THE STANDING ORDER THAT OPERATES AND THEN HE
21 HAS TO MAKE A DISCLOSURE.

22 MR. ACKER: THAT'S CORRECT, YOUR HONOR.

23 THE COURT: AND THAT WILL HAPPEN IN JUNE, IF
24 HE HAS A LAWYER.

25 MR. ACKER: THAT WOULD BE FINE. YES. I THINK

1 THAT IS CORRECT, YOUR HONOR. WE DO, BECAUSE THESE CASES
2 UNDER YOUR HONOR ARE JUST A LITTLE BIT DIFFERENT IN TERMS
3 OF THE SCHEDULING, I DO THINK OUR SECOND EXPERT REPORT IS
4 DUE IN TWO WEEKS, AND WE WOULD DELIVER THAT, SO IT WOULD
5 BE 60 DAYS FROM THAT DATE, UNLESS YOUR HONOR -- I THINK
6 YOUR HONOR SHORTENED IT IN SOME CASES, BUT WE WILL DO
7 WHATEVER YOUR HONOR SAYS.

8 THE COURT: YES. AND THEN, IN THEORY, WE ARE
9 ON A PATH TOWARDS TRIAL THEN.

10 MR. ACKER: THAT'S CORRECT, YOUR HONOR.

11 THE COURT: OKAY. WELL, THANK YOU. AND I
12 WILL CONTINUE HIM OVER TO 2:00 O'CLOCK AND SEE IF WE CAN
13 GET MR. HAWES INVOLVED IN THE CASE.

14 MR. ACKER: DO YOU NEED MR. COOPER TO COME
15 BACK AT 2:00 O'CLOCK?

16 THE COURT: NO, HE DOESN'T NEED TO COME BACK.
17 I WILL RELEASE MR. COOPER FROM THE CASE, AND IN THE
18 MEANTIME, I WOULD ASK THE CLERK TO PROVIDE YOU WITH THE
19 DOCUMENTS THAT YOU HAVEN'T RECEIVED YET.

20 MR. GRAY: THANK YOU, YOUR HONOR.

21 THE COURT: SO MR. EBEL CAN BE RELIEVED UNTIL
22 2:00 O'CLOCK.

23 THE RESPONDENT: THANK YOU, YOUR HONOR.

24 (WHEREUPON, THE PROCEEDINGS WERE ADJOURNED
25 UNTIL LATER IN THE DAY.)

1 (WHEREUPON, THE FOLLOWING PROCEEDINGS WERE
2 HELD IN THE AFTERNOON.)

3 MR. HAWES: I TALKED WITH HIS WIFE INITIALLY
4 WHEN THEY WERE NOT SATISFIED WITH THE OTHER ATTORNEY'S
5 PERFORMANCE. SHE ASKED IF I WOULD BE WILLING TO TAKE
6 OVER THE CASE, AND I SAID IF I WAS APPOINTED THE CASE, I
7 WOULD CERTAINLY LOOK INTO THE POSSIBILITY OF TAKING IT
8 OVER.

9 MEANWHILE, I HAVE LOOKED OVER WHAT I HAVE TO
10 DO. I FEEL LIKE I DON'T HAVE ENOUGH TIME TO DEVOTE TO
11 HIS CASE TO DO A GOOD JOB, AND SO I AM ASKING NOT TO BE
12 APPOINTED ON THE CASE, AND I HAVE ACTUALLY TALKED TO HER
13 TODAY ABOUT THAT.

14 THE COURT: OKAY. WELL, WE WILL FIND SOMEBODY
15 ELSE.

16 MR. HAWES: THANK YOU.

17 THE COURT: YOU ARE FREE TO LEAVE.

18 DID WE LEAVE ANY ISSUES UNRESOLVED THIS
19 MORNING THAT WE WERE GOING TO REVISIT, OR ARE WE GOOD ON
20 THAT?

21 MR. ACKER: I THINK THE ONLY THING, YOUR
22 HONOR, IS IF YOUR HONOR ENTERS AN ORDER ABOUT BRADY.

23 THE COURT: YES.

24 MR. ACKER: YOUR HONOR DID ALSO ASK ABOUT THE
25 CASES THAT ARE ON APPEAL, AND I HAVE SPOKEN TO THE BUREAU

1 OF PRISONS AND THEY ARE GOING TO GO AHEAD AND BEGIN THE
2 PROCESS OF REVIEWING THOSE AS WELL.

3 THE COURT: OKAY. AND DID WE PUT VIGIL TO
4 REST AS FAR AS YOU ARE CONCERNED?

5 MR. ACKER: YES, YOUR HONOR, I THINK SO.

6 THE COURT: DID YOU FIGURE OUT HOW MANY CASES
7 WERE RELEASED?

8 MR. ACKER: I HAVE NOT CHECKED THAT, YOUR
9 HONOR. I DO BELIEVE IT'S ABOUT EIGHT OR TEN.

10 THE COURT: MR. EBEL, YOU CAN HAVE A SEAT.

11 ARE THERE ANY OTHER JUDICIAL OFFICERS IN THE
12 DISTRICT WHO ARE BRINGING THE DETAINEES TO THE
13 COURTHOUSE? SO FAR?

14 MR. ACKER: YES. JUDGE GATES, I BELIEVE, DID
15 AT SOME OF THE HEARINGS THAT HE HELD, OR AT LEAST HE
16 TALKED ABOUT IT, AND I THINK HE DID.

17 THE COURT: IS HE STILL DOING THAT?

18 MR. ACKER: WE MET WITH HIM TODAY AT 1:00
19 O'CLOCK AND HE IS SETTING STATUS CONFERENCES WEEKLY ON
20 ALL THE CASES THAT HE IS RESPONSIBLE FOR, BUT HAS NOT
21 INDICATED WHETHER OR NOT THE RESPONDENTS WILL BE
22 PHYSICALLY PRESENT. I THINK HE IS TAKING THAT ON A CASE
23 BY CASE BASIS.

24 THE COURT: AND WHAT DOES HE HAVE, ABOUT 80
25 CASES?

1 MR. ACKER: I THINK IT'S ALL THE CASES OTHER
2 THAN YOUR CASES, AND IT'S PROBABLY ABOUT 60 OR 70 THAT HE
3 IS DOING THE NON-DISPOSITIVE SCHEDULING ISSUES AND
4 NON-DISPOSITIVE MOTIONS.

5 THE COURT: DO YOU THINK IT'S THAT MANY OR
6 MORE?

7 MR. ACKER: WELL, THERE WERE ORIGINALLY ABOUT
8 90-SOME CASES.

9 THE COURT: I HAD ABOUT 23.

10 MR. ACKER: SO THAT WOULD BE ABOUT 70, MINUS
11 THE ONES THAT HAVE ALREADY BEEN RELEASED.

12 THE COURT: SO HE HAS ABOUT 70 CASES.

13 MR. ACKER: I BELIEVE SO, YOUR HONOR.

14 THE COURT: MAYBE I SHOULD TAKE SOME OF HIS
15 CASES, EVEN IT OUT.

16 MR. ACKER: I THINK IT WAS DIVIDED FAIRLY
17 EVENLY, EXCEPT FOR JUDGE HOWARD WHO TOOK THE SMALLER
18 LOAD.

19 THE COURT: OKAY. I CAN VOLUNTEER. I CAN DO
20 FIRST APPEARANCES AND THINGS LIKE THAT, AND DETENTION
21 HEARINGS, A PRETTY UTILITY IN-FIELDER HERE. I WILL BRING
22 THAT UP.

23 MR. HAWES IS NOT ABLE TO HANDLE YOUR CASE WITH
24 HIS PRACTICE. HE HONESTLY SAID THAT HE DOESN'T HAVE THE
25 TIME TO DEVOTE TO IT, SO I AM GOING TO APPOINT ANOTHER

1 LAWYER TO REPRESENT YOU, AND SEE IF YOU CAN MAKE PROGRESS
2 WITH THE OTHER LAWYER.

3 MEANTIME, YOUR DISCOVERY IS ONGOING, AS WE
4 TALKED ABOUT THIS MORNING, AND I KNOW YOU DON'T WANT TO
5 LOSE YOUR PLACE IN LINE; RIGHT?

6 THE RESPONDENT: WELL, MY MOST BIGGEST CONCERN
7 I HAVE IS ADDRESSING -- HOW CAN I PUT IT -- THE
8 EVALUATION THAT WAS MADE BY BRENT THIBAUT. NOW THAT IS
9 THE SOLE CRITERIA AT THE MOMENT ON WHICH CERTIFICATION
10 WAS MADE, BRENT THIBAUT BEING THIS SPECIALIST AT DEVENS.
11 PART OF THE REPORT OF WHICH YOU HAVE THERE IS HIS
12 PROBATION RECOMMENDATIONS.

13 NOW, THE BALANCE OF THIS REPORT IS -- AND I
14 DON'T SAY THIS LIGHTLY, SIR -- IT'S PERJURATVIE. IT'S A
15 WORK OF FICTION, AND WE CAN PROVE THIS. AND -- BUT THE
16 ONLY PLACE IT CAN BE PROVED, SIR, IS AT A HEARING, AT A
17 TRIAL, WHICH IS WHAT I MOST CERTAINLY WANT TO PURSUE.

18 NOW, MY WIFE IS HERE. SHE HAS BEEN HERE AT
19 THE FIRST HEARING, AT THIS HEARING, TOTALLY SUPPORTIVE,
20 WISHES TO WORK ACTIVELY WITH REPRESENTING COUNSEL, WISHES
21 TO ALSO INSTITUTE AND IS IN THE PROCESS OF INSTITUTING A
22 SUIT OF SLANDER, OF DEFAMATION OF CHARACTER AND OTHER
23 CONSIDERATIONS AGAINST BRENT THIBAUT WHO BROUGHT HER
24 INTO THIS SITUATION FOR NO VALID REASON WHATSOEVER, WHICH
25 AGAIN, CAN BE PROVEN, BUT ONLY CAN BE PROVEN THROUGH A

1 HEARING, THROUGH A TRIAL.

2 THESE ARE THE CONCERNS I HAVE. IT'S MORE THAN
3 A CERTIFICATION, OF WHETHER I DESERVE TO BE CERTIFIED.
4 IT'S WHERE, AS YOU SAID EARLIER, TRUTH EXISTS AND WHERE
5 JUSTICE EXISTS. I WANT THE TRUTH AND THAT IS ALL I WANT.
6 IF THE TRUTH GET ME CERTIFIED -- COMMITTED, I HAVE NO
7 PROBLEM. IF THE TRUTH GETS ME COMMITTED, I HAVE NO
8 PROBLEM WITH THAT AT ALL.

9 ALL I WANT TO DO IS GET THE TRUTH INTO COURT,
10 AND AT THE MOMENT, THE PAPERWORK THAT PRESENTLY EXISTS IS
11 NOT THE TRUTH, SIR. I HAVE NOT SEEN THIS EVALUATION,
12 SIR, THAT SOMEONE IS GOING TO PRODUCE WHO HAS NEVER SEEN
13 ME, NEVER SPOKEN TO ME, AND LOOKS AT THE SAME SPURIOUS
14 INFORMATION THAT HAS BEEN IN MY FILE SINCE BRENT THIBAUT
15 PUT IT THERE A YEAR OR SO AGO.

16 THE CERTIFICATION, THE FIRST EXPERT WITNESS, I
17 BELIEVE HER NAME IS CUNIC, THAT IS A REPRINT, SIR,
18 VERBATIM, OF THE BRENT THIBAUT'S FICTION. THAT IS A
19 CERTIFICATION DOCUMENT. THE CERTIFICATION PEOPLE, THE
20 PANEL, WENT THROUGH IN WASHINGTON WHEN THEY TRIED TO GET
21 ME CERTIFIED, POLICE DEPARTMENTS, THEY WENT THROUGH
22 EVERYTHING THEY COULD TO TRY TO FIND SOME WAY, SOME
23 EVIDENCE, SOMETHING THEY COULD COME UP WITH. THAT IS IN
24 DISCOVERY. THEY CAME UP WITH NOTHING. THAT IS IN
25 DISCOVERY.

1 WHAT THEY CAME UP WITH IS BRENT THIBAULT'S
2 DOCUMENTS, REPORT, EVALUATION, WHICH IS SPURIOUS, IS
3 VINDICTIVE, AND PURE FICTION -- I WON'T SAY PURE -- A
4 GOOD DEAL OF IT. AND THIS, AGAIN, CAN BE PHYSICALLY AND
5 ABSOLUTELY PROVEN, AND THAT'S ALL I WISH TO DO. AND
6 THAT'S ALL I SEE.

7 AND SO IF A HEARING -- IF IT TAKES SIX MONTHS,
8 NINE MONTHS, A YEAR, TO WAIT FOR A TRIAL, I HAVE NO
9 PROBLEM WITH THAT WHATSOEVER.

10 I AM NOT INTERESTED IN THE TIME ELEMENT HERE.
11 I AM INTERESTED IN ALL OF THIS BEING RESOLVED AND FOR
12 ONCE THE TRUTH COMING OUT. THAT'S ALL I CARE ABOUT
13 BECAUSE IT'S MY REPUTATION. IT MY WIFE'S REPUTATION.
14 IT'S HER SUPPORT OF ME THROUGHOUT ALL OF THIS. AND SHE
15 HAS BEEN -- FOR A WOMAN TO STAY WITH SOMEONE IN THIS
16 SITUATION FOR GOING ON 11 YEARS, AND THEN FOR THIBAULT TO
17 USE THAT AGAINST HER, WHICH HE DOES IN THE MOST HOSTILE
18 WAY, IS REPREHENSIBLE. IT'S ABSOLUTELY REPREHENSIBLE.
19 AND EVERY EVIL BIT OF IT IS FULLY RECORDED IN DISCOVERY.

20 THE COURT: ALL RIGHT. WE'LL APPOINT YOU
21 COUNSEL, AND AS I SAID, YOU SHOULD PAY ATTENTION TO YOUR
22 DISCOVERY SCHEDULE.

23 THE RESPONDENT: YES, SIR.

24 THE COURT: OKAY. THAT'S ALL. THANK YOU, MR.
25 ACKER AND MR. GRAY.

1 THE RESPONDENT: THANK YOU, YOUR HONOR.

2 THE COURT: THANK YOU.

3 (WHEREUPON, THE PROCEEDING WERE ADJOURNED.)

4
5
6
7
8 CERTIFICATE

9
10 THIS IS TO CERTIFY THAT THE FOREGOING
11 TRANSCRIPT OF PROCEEDINGS TAKEN IN THE UNITED STATES
12 DISTRICT COURT IS A TRUE AND ACCURATE TRANSCRIPTION OF
13 THE SHORTHAND NOTES OF THE PROCEEDINGS TAKEN BY ME IN
14 MACHINE SHORTHAND AND TRANSCRIBED BY COMPUTER UNDER MY
15 SUPERVISION.

16 DATED THIS 19TH DAY OF MAY, 2011.

17
18
19 /S/ SHARON K. KROEGER
20 COURT REPORTER
21
22
23
24
25